

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
	)	
Impediments to Amateur Radio	)	Docket No.: GN 12-91
Communications	)	

**COMMENTS OF NICHOLAS B. PROY**

**Introduction**

1. I am an extra-class amateur radio licensee and was issued the call sign AB3HJ by the Federal Communications Commission (“Commission”).
2. I am also a General Mobile Radio Service licensee and was issued the call sign WQOW530 by the Commission.
3. I am admitted to practice law in Maryland, Pennsylvania and Washington, D.C., and the United States District Court for the District of Maryland, the United States District Court for the Western District of Pennsylvania and the United States Tax Court.

**Impediments to Enhanced Amateur Radio Service Communications**

2(a): Private Land Use Restrictions

4. Many properties in the United States are encumbered by covenants, conditions and restrictions (collectively “CC&Rs”) that are enforced by homeowners associations (“HOAs”). In fact, it is estimated that as of 2011, three hundred fourteen thousand (314,000) HOA communities throughout the United States enforce CC&Rs against twenty-five million, one hundred thousand (25,100,000) residential properties, which equates to sixty-two million, three hundred thousand (62,300,000) residents.<sup>1</sup>
5. By contrast, it was estimated that as of 1970, only ten thousand (10,000) HOA communities throughout the United States enforced CC&Rs against seven hundred one thousand (701,000) residential properties, which equates to two million, one hundred thousand (2,100,000) residents.<sup>2</sup>
6. CC&Rs are contractual in nature. A person who purchases the encumbered property does so with the knowledge that they are purchasing the property subject to the encumbrances. However, the purchaser has absolutely no bargaining power: they can either purchase the encumbered property or walk away and find another property. The CC&Rs cannot be negotiated and they are presented in a “take it or leave it” fashion.

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<sup>1</sup> See <http://www.caionline.org/info/research/Pages/default.aspx>

<sup>2</sup> See <http://www.caionline.org/info/research/Pages/default.aspx>

7. My wife, who is also an amateur radio operator licensed by the Commission, Kara Proy (K3XYL), and I spent nearly two (2) years looking for an unencumbered property so we could enjoy amateur radio activities and provide emergency communications without arbitrary and unnecessary restrictions by HOAs and CC&Rs. This evidences how difficult it can be to find unencumbered property in certain areas where CC&Rs and HOAs are common (such as the greater Baltimore, Maryland, area).
8. Attached as Exhibit A, entitled “CC&Rs From the Greater Baltimore, Maryland, Area,” is a sampling of CC&Rs from the greater Baltimore, Maryland, area. I have copied the actual language from the CC&Rs as recorded among the county land records. I have also indicated the county in which the CC&Rs are recorded, as well as the book (liber) and page (folio) and HOA name for future reference if necessary.
9. These private restrictions range from absolute prohibitions of amateur radio antennas to allowing external antennas only with advance written permission of the HOA.
10. If an HOA denies an amateur radio operator’s request to install an exterior antenna, the amateur radio operator will have absolutely no recourse and will be forced to using internal antennas, which are less effective and expose those in the household to greater amounts of electromagnetic radiation than necessary. An external antenna, by contrast, will reduce ones exposure to electromagnetic radiation and be more effective for handling communications in emergency situations.
11. I would also like to note that even if an amateur radio operator were to set up an amateur radio station with an external antenna in an emergency, (s)he still would still be subject to the CC&Rs. This means that even in an emergency an amateur radio operator cannot install an external antenna if they are prohibited altogether or advance approval has not been obtained.
12. The Commission, however, would have the ability to alleviate all of these concerns and allow for amateur radio antennas in a similar fashion to that of the Commission’s the Over The Air Reception Devices Rule (“OTARD”) <sup>3</sup>, which was enacted to prevent and correct similar problems among HOAs using CC&Rs to restrict and prohibit the installation of radio and television reception devices.<sup>4</sup>

2(b): “Unreasonable or Unnecessary” Criteria

13. What is reasonable or unreasonable for antenna accommodations will vary greatly depending on whom the question is presented.
14. An unreasonable and unnecessary restriction would be a complete prohibition against the installation of any external amateur radio antennas. Such absolute prohibitions hinder emergency communications, discourage individuals from obtaining amateur radio

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<sup>3</sup> 47 CFR § 1.400. See <http://www.fcc.gov/guides/over-air-reception-devices-rule>

<sup>4</sup> See <http://wireless.fcc.gov/services/index.htm?job=prb-1&id=amateur&page=1>

licenses and hamper disaster relief efforts where amateur radio communications are necessary.

15. Further, an unreasonable and unnecessary restriction would be obtaining an HOA board's approval for installing an outdoor amateur radio antenna because there is no recourse if the HOA board decides not to grant permission to install an exterior antenna. The Commission resolved a similar predicament by enacting OTARD when it was realized that HOAs were enforcing CC&Rs that prohibited the installation of external reception antennas.

16. I see no reason why the Commission could not promulgate a similar regulation that would apply the same logic and reasoning of OTARD to cover amateur radio antennas.

2(c): Minimizing Risk of Private Land Use Restrictions

17. The only way to enjoy amateur radio and provide emergency communications through amateur radio is to avoid CC&R encumbered property.

18. As previously stated, my wife and I spent nearly two (2) years looking for a residence that was not encumbered by CC&Rs prohibiting amateur radio antennas.

19. The Commission, however, could enact a similar provision to OTARD that would apply to amateur radio antennas.

20. Properties not encumbered by CC&Rs only face zoning restrictions enacted by local governments. However, the Commission has addressed this issue in PRB-1.<sup>5</sup>

Respectfully Submitted,

/S/

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<sup>5</sup> See <http://wireless.fcc.gov/services/index.htm?job=prb-1&id=amateur&page=1>

**EXHIBIT A**  
**CC&Rs From the Greater Baltimore, Maryland, Area**

**Greens of Westminster Homeowner's Assoc.**  
Carroll County, MD: Book 654, Page 495

(9) No outside radio tower or television or radio antenna in excess of six feet in height shall be erected, installed, or maintained on any part of said land, or any improvements thereon until the Company has first given its approval, in writing, to the type, height and location of the tower or antenna, proposed to be so erected, installed or maintained.

**Friendship Overlook Homeowner's Assoc.**  
Carroll County, MD: Book 2093, Pages 302-303

I. Transmission Devices. No outside satellite dish, radio antenna, television antenna or similar device shall be erected, installed or maintained on any Lot without the approval of the Architectural Review Committee and subject to the screening and color requirements imposed by the Architectural Review Committee, subject to federal and local communication laws, as amended from time to time.

**Old Georgetown Village Homeowner's Assoc.**  
Montgomery County, MD: Book 5241, Page 74

Section 8. No exterior radio or television receiving or transmitting antennae or external apparatus shall be installed on any Lot. Normal radio and television installations wholly within a building are excepted.

**Orchard Hills Homeowner's Assoc.**

Montgomery County, MD: Book 6701, Page 233

Section 12. No exterior television or radio antenna of any sort shall be erected or maintained on any Lot without the written consent of the Architectural Review Board, provided that the Association shall have the right to erect and maintain a master antenna on Association property, if the erection of such master antenna is approved by members of the Association pursuant to the provisions of Article IV, hereof.

**Meadow Brook Village Homeowner's Assoc.**

Montgomery County, MD: Book 5318, Page 509

LIBER 5318 FOLIO 509  
(g) No Unit Owner, resident or lessee shall install wiring for electrical or telephone installation, television antennae, or other equipment, which protrudes through the walls or the roof of the Building or is otherwise visible on the exterior of the Building except as presently installed or as authorized by the Board.

**Meadows at Hurley Ridge Homeowner's Assoc.**

Montgomery County, MD: Book 29904, Page 357

(k) To the extent permitted by law, a DBS antenna, MDS antenna or transmission-only antenna may be erected on a Lot provided it is not greater than one (1) meter in diameter and prior approval of the Board of Directors is obtained. No television broadcast antenna of any size or masts of any size attached to any of the above-listed antennas may be erected. Qualified antennas must be erected on the rear of the Lot, unless such placement impedes reception in which event such antenna may be erected in another location on the Lot provided that it is screened by landscaping or other material where reasonable.

**Meadowvale Homeowner's Assoc.**

Montgomery County, MD: Book 5937, Page 83

(c) In the case of the single family homes, roof top television antennae shall be strongly discouraged and shall be restricted to one zone 2 antenna (23 or fewer elements) mounted on a single mast which does not exceed 10 feet in length for each house. In the case of the townhouses, roof top television antenna shall also be strongly discouraged. Only one master antenna for each townhouse group shall be permitted. The said master antenna for each townhouse group shall be approved and located by the Environmental Protection Board and the cost of erection and/or maintenance of said master antenna shall be the joint responsibility of all of the owners in that group. If a CATV System shall be available prior to the completion of any townhouse building, roof top antennae shall not be permitted with respect to that unit.

No amateur radio transmission antenna shall be constructed until plans for the same have been submitted to and approved by the Environmental Protection Board. The plan shall show location, height and configuration of the equipment and, if approved, shall be constructed in such a manner as not to present any electrical hazard to any person around, near or upon said antenna. The applicant shall also present affidavits from all property owners within 100 feet of his dwelling stating that they have no objection to such installation. This provision does not obligate the Environmental Protection Board to approve any amateur radio transmission antennas.

**Villages of Bethesda Homeowner's Assoc.**

Montgomery County, MD: Book 17776, Page 325

(n) Except as specifically permitted by applicable federal governmental regulations, no exterior aerials or antennas of any type, including, but not limited to, satellite dishes for reception or transmission, may be erected or maintained within the Property without the prior written approval of the Board of Directors, or its designated committee, pursuant to Article 6 hereof; provided, however, that satellite dishes not in excess of one (1) meter in diameter are permitted. The Board of Directors may impose reasonable rules and regulations regarding the installation, maintenance, location and screening of any such satellite dish, subject to applicable federal governmental regulations. Aerials and antennas situated entirely within a dwelling unit, and not visible from the exterior, are permitted.

**Brimfield Homeowner's Assoc.**

Carroll County, MD: Book 895, Page 454

(k) No outside television or radio aerial or antenna, or other aerial or antenna, for reception or transmission, shall be maintained upon any home without the prior written consent of the Board of Directors and in no event shall such aerial or antenna be located so as to extend upward above the highest point of the home to which it is attached. No aerial or antenna shall be placed on the outside of any home except on the rear building wall of said home.

**Equestrian Estates Homeowner's Assoc.**

Carroll County, MD: Book 1362, Page 118

(m) No outside television aerial, or radio antenna, or other aerial or antenna, including amateur radio transmission antennae, satellite dishes, for either reception or transmission, shall be maintained upon the Property unless approved in writing by the Architectural Standards Committee, pursuant to Article VII of this Declaration.

**Eagleview Homeowner's Assoc.**

Carroll County, MD: Book 1409, Page 199

**Section 6. Antennas.** No outside television aerial, satellite dish or radio antennas, or antenna for either reception or transmission shall be erected, installed or maintained on a Lot.

**Paddocks Homeowner's Assoc.**

Carroll County, MD: Book 1444, Page 456

I. Transmission Devices. No outside satellite dish, radio antenna, television antenna or similar device shall be erected, installed or maintained on any lot without the approval of the Architectural Review Committee and subject to the screening and color requirements imposed by the Architectural Review Committee.

**Marriott Woods Homeowner's Assoc.**

Carroll County, MD: Book 1522, Pages 842-843

15. LIGHTING AND WIRING; ANTENNA. The exterior lighting on Lots shall be directed downward and shall not be directed outward from, or extend beyond, the boundaries of any Lot. All wiring on any Lot shall be underground. No exterior radio, television and/or citizens-band radio antennae, satellite dish, or other broadcasting or receiving apparatus, or cable television (or other) exterior wiring shall be permitted upon any Lot or any of the Property; except for a community cable television or radio system or other similar equipment installed or approved by Declarant for the benefit of all of the Lots or such portion thereof where cable service is available.

**Mount Airy Manor Homeowner's Assoc.**

Carroll County, MD: Book 1539, Page 137

{m) no outside television aerial or radio antenna, or other aerial or antennae for either reception or transmission, shall be maintained upon the Property except that such aerials or antennae may be erected and maintained within the dwellings located upon the Property; no satellite dishes shall be allowed.